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(Pro Hac Vice Approved 12/4/2019)

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Attorneys for Defendants: Grand Canyon University; Grand Canyon Education Inc.; Grand Canyon University Campus Police; and Brian Mueller

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Kino Bonelli

Plaintiff,

V.

Grand Canyon University; Grand Canyon Education, Inc.; Grand Canyon University Campus Police and Public Safety; Brian Mueller; Joe Yahner; Kenny Byers; Michael Martinez; Officer Robinson; Officer Washington; Sergeant Bristle; Sergeant Wiley; Officer M. Grupe; And Steve Young, Individually, and in their capacity as officers and agents for Grand Canyon University and Grand Canyon University, Inc.

Defendants.

Case No.: 2:20-cv-00143-SMB

JOINT CASE MANAGEMENT REPORT

(Assigned to Hon. Susan M. Brnovich)

1 TO THE HONORABLE COURT:

2 Plaintiff Kino Bonelli (hereinafter “Mr. Bonelli” or “Plaintiff”) and
3 Defendants **Grand Canyon University; Grand Canyon Education Inc.; Grand**
4 **Canyon University Campus Police; and Brian Mueller** (collectively,
5 “Defendants”) submit this Joint Case Management Report, pursuant to the Court’s
6 order dated April 10, 2020.

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10 **1. Parties and Counsel Who Prepared The Report**

11 A. Krista R. Hemming, Counsel for Plaintiff Kino Bonelli
12 B. Robert B. Zelms, and Nishan J. Wilde, Counsel for Defendants: Grand
13 Canyon University; Grand Canyon Education Inc.; Grand Canyon University
14 Campus Police; and Brian Mueller

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18 **2. Parties to the Case**

19 A. Plaintiff, Kino Bonelli
20 B. Defendant, Grand Canyon University
21 C. Defendant, Grand Canyon Education Inc.
22 D. Defendant, Grand Canyon University Campus Police
23 E. Defendant, Brian Mueller
24 F. Defendant, Joe Yahner (terminated from lawsuit on 5/8/2020)
25 G. Defendant, Kenny Byers (terminated from lawsuit on 5/8/2020)

- 1 H. Defendant, Michael Martinez (terminated from lawsuit on 5/8/2020)
- 2 I. Defendant, Officer Robinson (terminated from lawsuit on 5/8/2020)
- 3 J. Defendant, Officer Washington (terminated from lawsuit on 5/8/2020)
- 4 K. Defendant, Sergeant Bristle (terminated from lawsuit on 5/8/2020)
- 5 L. Defendant, Sergeant Wiley (terminated from lawsuit on 5/8/2020)
- 6 M. Defendant, Officer M. Grupe (terminated from lawsuit on 5/8/2020)
- 7 N. Defendant, Steve Young (terminated from lawsuit on 5/8/2020)

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11 3. **Statement of the Case**

12 A. **Plaintiff's Claims**

13 On or about February 19, 2017, Mr. Bonelli, a GCU student, was entering
14 campus through the main entrance. Mr. Bonelli was walking towards the main guard
15 tower, where a few guards were standing, when Officer ROBINSON ordered Mr.
16 Bonelli show is ID. Mr. Bonelli, held up his student ID card so that Officer
17 ROBINSON could see it. Officer ROBINSON, who was across a lane of traffic
18 demanded Mr. Bonelli cross the street to present his ID. There was no cross walk,
19 nor was there a way for Mr. Bonelli to safely cross over to where Officer
20 ROBINSON was standing, so Mr. Bonelli retreated and walked to a secondary
21 entrance and again attempted to enter campus. At that entrance, Mr. Bonelli
22 presented both his student ID and his state issued ID to the officers.

23
24 During the encounter, Mr. Bonelli expressed his frustration about the
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1 treatment he received and was receiving from GCU POLICE and indicated that he
2 was going to file a formal complaint regarding the officers unprofessional and
3 aggressive behavior. Officer WASHINGTON stated that “since I’m unprofessional,
4 and you are going to report me, I’m keeping your ID and you will never come back
5 on campus.” Officer WASHINGTON then confiscated Mr. Bonelli’s student ID and
6 denied him entry onto the campus.
7

8 On or about February 27, 2017, GCU Student Conduct Coordinator Alan
9 Boelter contacted Mr. Bonelli by email to discuss the Feb 19th incident. Alan Boelter
10 told Mr. Bonelli to come to campus to discuss his involvement with an incident a
11 possible student policy violation. The alleged violation: “Failure to Comply”; the
12 claim: he refused to show ID.
13

14 Mr. Bonelli informed Boelter that he could not attend the in-person meeting
15 because GCU POLICE had seized his GCU Student Identification Card, and
16 therefore it was not possible that he “failed to comply” by not giving his ID. Mr.
17 Boelter contacted GCU POLICE and discovered they did have Mr. Bonelli’s ID. Mr.
18 Boelter retrieved and returned it.
19

20 In a second incident On or about July 25, 2017, in the early hours of the
21 morning, Mr. Bonelli was studying on campus in an area open to all students, when
22 he was contacted by GCU POLICE. Mr. Bonelli presented his ID. The GCU Officer
23 ran Mr. Bonelli’s name through the system and found that he was enrolled but was
24 not living on campus. Officer GROUPE stated that student policy states commuter
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1 students were not allowed on campus during certain times. There is no such GCU
2 policy. Mr. Bonelli stated he was not aware of such a policy and would leave because
3 he did not want to violate student policy. Officer GROUPE told Mr. Bonelli that he
4 would allow him to stay, however Mr. Bonelli declined and left campus
5 immediately.

6 On or about July 30, 2017, GCU Campus Safety Supervisor MARTINEZ
7 issued a campus BOLO for Mr. Bonelli. The BOLO stated that in February, Mr.
8 Bonelli, a non-student, tried to gain access onto campus without showing ID, became
9 disorderly and combative, refused to leave and then was trespassed. None of which
10 occurred. The BOLO also stated that he was a former student that graduated in 2016
11 (proven untrue); and is known to use his old GCU student ID to gain access onto
12 campus.

13 Mr. Bonelli contacted the Dean of his program in an attempt to get the BOLO
14 lifted so he could attend class. The BOLO was lifted on or about August 7, 2017.

15 Soon after, Mr. Bonelli was contacted by the Office of Academic Compliance
16 at GCU, with official notification that Mr. Bonelli was reported for violations of the
17 Student Code of Conduct and Academic Standards, for “behaving in any manner
18 that creates a disruption, or hostile or offensive educational environment for a
19 student, faculty member, or staff member,” and “failing to comply promptly with
20 any reasonable directive from a faculty member or University Official.” Mr. Bonelli
21 disputed the allegation, and submitted multiple written reports, via email, detailing
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1 the incidents.

2 Despite direct evidence to the contrary, the Office of Academic Standards
3 stated found they found merit in the violation allegation, and Mr. Bonelli was issued
4 an “Official Disciplinary Warning” which stated this was his “first and only warning
5 to correct this behavior.”

6 Mr. Bonelli contacted the Vice President and Dean of Institutional
7 Effectiveness Dr. Antoinette Farmer-Thompson. After listening to Mr. Bonelli’s
8 story, Dr. Farmer undertook an investigation and found Mr. Bonelli had been
9 truthfully, and had experienced severe civil rights violations including racial
10 profiling, discrimination, and defamation. Finally, on or about August 29, 2018, Dr.
11 Farmer able to get the “Disciplinary Warning” removed.

12 Plaintiff then filed suit, alleging five (5) causes of action: 1) Violation Of
13 Fourth Amendment (Unlawful Seizure based on the first incident); 2) Violation Of
14 Fourth Amendment (Unlawful Seizure based on the second incident); 3) Violation
15 Of First Amendment; 4) Violation Of Civil Rights § 1981; 5) Violation Of Civil
16 Rights Title VI.

17 **B. Defendants Brief Description of Claims**

18 **Statute of Limitations:** All of the alleged bad acts by Defendants occurred
19 between February 19, 2017 and August 24, 2017. The statute of limitations for
20 Plaintiffs' claims is two years. Plaintiff was required to file his claims on or before
21

1 February 19, 2019 and August 24, 2019, respectively. Plaintiff filed the Complaint
2 in January 2020, well after the statute of limitations had elapsed.

3 **42 U.S.C. § 1983 Claims:** Defendants did not act "under color of state law,"
4 and therefore, they cannot be liable for Section 1983 claims.
5

6 In addition, Defendants' actions did not violate Plaintiff's First Amendment or
7 Fourth Amendment rights. On the nights in question – February 19, 2017 and July
8 25, 2017 – Defendants asked to see Plaintiff's student ID to make sure that he was a
9 student at Grand Canyon University. GCU is well within its rights to check student
10 ID's to protect the safety of the campus. Neither instance was an "unlawful
11 detainment." Nor were Plaintiff's free speech rights ever chilled. In fact, he was able
12 to express his right to free speech on several occasions, fully explaining his side of
13 the story to GCU officials.
14

15 In addition, GCU cannot be liable for Section 1983 violations of its
16 employees. Nor can GCU be held liable under a theory of municipal liability, as
17 GCU is not a municipality, department or branch of the state or local government.
18 And even if GCU could theoretically be held liable under a theory of municipal
19 liability, Plaintiff cannot satisfy the requirements of Monell to prove municipal
20 liability.
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22 **42 U.S.C. § 1981 Claim:** GCU's actions were not the byproduct of racial
23 discrimination. GCU's actions were not motivated by racial animus. On the contrary,
24 GCU's actions were motivated by the desire to protect the safety of the campus.
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In addition, Plaintiff was never denied access to classes or GCU's educational facilities. Plaintiff was able to take full advantage of GCU, and was able to obtain both graduate and undergraduate degrees from GCU.

42 U.S.C. § 2000d Claim: GCU's actions were not the byproduct of racial discrimination. GCU's actions were not motivated by racial animus. On the contrary, GCU's actions were motivated by the desire to protect the safety of the campus.

In addition, Plaintiff was never denied access to classes or GCU's educational facilities. Plaintiff was able to take full advantage of GCU, and was able to obtain both graduate and undergraduate degrees from GCU.

4. Jurisdiction

This action is brought pursuant to 42 U.S.C. §§ 1983 & 1981, Title VI of the 1964 Civil Rights Act as well as the First, Fourth, and Fourteenth Amendments to the United States Constitution.

The United States District Court for the District of Arizona has jurisdiction over this action pursuant to:

1. 28 U.S.C. § 1331, which gives district courts original jurisdiction over civil action arising under the Constitution, laws or treaties of the United States;
2. 28 U.S.C. § 1343, which gives district court's original jurisdiction over action to secure civil rights extended by the United States government;
3. 28 U.S.C. § 1367(a), which gives district court's supplemental jurisdiction to

1 hear pendant State tort claims arising under State law.

2 The incidents complained of in this action occurred in the County of
3 Maricopa, State of Arizona, within the territorial jurisdiction of this court, therefore
4 venue properly lies in this court pursuant to 28 U.S.C. § 1331(b)(2).

5 **5. Parties Not Served**

6 Defendants Joe Yahner; Kenny Byers; Michael Martinez; Officer Robinson;
7 Officer Washington; Sergeant Bristle; Sergeant Wiley; Officer M. Grupe; and Steve
8 Young have not been served. As a result, these parties have been terminated from
9 the case, per court order on May 8, 2020.

10 **6. Adding Parties and Amending Pleadings**

11 At this time Plaintiff has no plans to add any additional parties. Plaintiff does
12 reserve the right to amend the pleadings pending the Courts decision on Defendants
13 Rule 12(b) Motion to Dismiss for Failure to State a Claim.

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23 **7. Possible Motions**

24 **A. Plaintiff**

25 If Plaintiff does amend the pleadings, Plaintiff intends to file a Motion for
26 Alternative Service. Plaintiff reserves the right to bring pre-trial motions as the
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1 evidence and issues develop.
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5 **A. Defendant**
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9 If Plaintiff files any amended complaint, Defendants reserve the right to file a
10 motion to dismiss or motion for judgment on the pleadings, if appropriate.
11 Defendants also anticipate filing a motion for summary judgment, if Plaintiff's
12 claims survive motion to dismiss and/or motion for judgment on the pleadings.
13 Defendants reserve the right to file any and all pre-trial motions in light of the
14 evidence and issues presented in this matter.

15 **8. Suitability for Reference to a U.S., Magistrate Judge for a Settlement**
16 **Conference**

17 The Parties request a jury trial, but will participate in good-faith settlement
18 efforts, including possibly a settlement conference and/or mediation. In addition,
19 should the Court deem the damages are likely to be under \$50,000, the parties will
20 participate in arbitration.
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24 **9. Related Cases**
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27 There are no related cases.
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1 **10. Electronically Stored Information**

2 Plaintiff has turned over all electronically stored information (See section 13
3 below).
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6 **11. Claims of Privilege or Work Product**

7 At this time, Plaintiff does not foresee any issues relating to claims of privilege
8 or work product.
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10 As discovery progresses and Defendants identify information subject to
11 claims of privilege or work product, Defendants reserve the right to invoke privilege
12 or work product.
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16 **12. Issues Under Federal Rule of Evidence 502(d)**

17 At this time, Plaintiff does not foresee the need to seek an order under Federal
18 Rule of Evidence 502(d) at this time, but reserves any and all rights under Federal
19 rules of Evidence.
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22 Defendant reserves any and all rights under Federal Rule of Evidence 502(d).
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24 **13. MIDP**

25 Plaintiff has complied with MIDP order and produced all evidence currently
26 in the custody and control of Plaintiff.
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1 Defendants anticipate producing its MIDP on May 15, 2020.
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4 **14. Discovery**

5 a. Depending on the MIDP responses, the parties may find further written
6 discovery is warranted. Additionally, the parties anticipate taking depositions of the
7 Plaintiff and of the named Defendants.

8 b. The Parties do not anticipate any changes to the discovery limitation
9 imposed by the Federal Rules of Civil Procedure will be necessary.

10 c. The Parties have set the number of hours permitted for each deposition
11 at 7 hours per witness, as set forth in the Federal Rule of Civil Procedure 30(d)(1).

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16 **15. MIDP Service**

17 Plaintiff has complied with MIDP order and produced all evidence currently
18 in the custody and control of Plaintiff. By mutual agreement, the disclosures were
19 produced electronically via email and a drop box link on May 4, 2020.

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21 Defendants anticipate producing its MIDP on May 15, 2020.
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28 **16. Deadlines**

a) Motions to amend the Complaint and to join additional parties shall be filed
no later than 7/3/2020.

- 1 b) The parties with the burden of proof on an issue shall disclose the identity of
2 all persons whom they may call at trial to present evidence under Rules 702,
3 703, 704 or 705 of the Federal Rules of Evidence no later than 3/3/2021. The
4 parties shall disclose the identity of all rebuttal experts no later than 4/1/2021.
5 These disclosures shall be full and complete as required by Fed. R. Civ. P.
6 26(a)(2)(A)-(C).
- 7 c) The disclosures of the identities of all persons whom a party may call at trial
8 to present evidence under Fed. R. Evid. 702, 703, 704, or 705 shall also
9 include all of the disclosures required by Fed. R. Civ. P. 26(a)(2)(B) if the
10 witness is either (1) retained or specifically employed to provide expert
11 testimony in this case, or (2) is an agent or employee of the party offering the
12 testimony whose duties regularly involve giving expert testimony. No
13 deposition of any expert witness shall occur before the disclosures concerning
14 expert witnesses mandated by this Order are made. Expert reports disclosed
15 under Fed. R. Civ. P. 26(a)(2)(B) must set forth "the testimony the witness is
16 expected to present during direct examination, together with the reasons
17 therefor." Full and complete disclosures of such testimony are required on or
18 before the dates set forth above; absent truly extraordinary circumstances,
19 parties will not be permitted to supplement their expert reports after these
20 dates.
- 21 d) All fact discovery must be completed by 2/20/21, including depositions of

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1 parties and lay witnesses; answers to interrogatories; and supplements to
2 interrogatory answers. Each party shall conduct discovery in an expeditious
3 manner so as to complete any and all discovery by the deadline. "Complete"
4 includes time to propound discovery, the time to answer all propounded
5 discovery, the time for the Court to resolve all discovery disputes, and the
6 time for the parties to conduct any final discovery necessitated by the Court's
7 ruling on any discovery disputes.
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- 10 e) All expert discovery must be completed by 4/29/2021, including depositions
11 of all expert witnesses.
- 12 f) The parties must complete all pre-trial disclosures required under Fed. R. Civ.
13 P. 26(a)(3), of all exhibits to be used and all witnesses to be called at trial, on
14 or before 1/20/2021 so that the parties can complete meaningful discovery
15 necessitated by those disclosures before the discovery deadline.
- 16 g) Good faith settlement discussions shall be held no later than 5/5/2021.
- 17 h) All dispositive motions, including Daubert motions,¹ shall be filed no later
18 than 5/30/2021.
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24 **17. Jury Trial**

25 The Parties have requested a Jury Trial.

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28 ¹ Evidentiary motions made under *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

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18. Settlement

The Parties will participate in good-faith settlement efforts, including possibly a settlement conference and/or mediation. In addition, should the Court deem the damages are likely to be under \$50,000, the parties will participate in arbitration.

19. Other Issues

The parties do not anticipate any other issues affecting the status or management of the case at this time.

Dated: May 13, 2020

THE HEMMING FIRM

By: /s/ Krista R. Hemming
Krista R. Hemming, Esq.
Attorneys for Plaintiff
Kino Bonelli

Dated: May 13, 2020

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

By: /s/ Nishan J. Wilde
Robert B. Zelms, Esq.
Nishan J. Wilde, Esq.
Attorneys for Defendants: Grand
Canyon University; Grand Canyon
Education Inc.; Grand Canyon
University Campus Police; and Brian
Mueller

I certify in accordance with Local Rule 5-4.3.4 that all parties have concurred in the contents of the document and have authorized my office to file it.

DATED: May 13, 2020

THE HEMMING FIRM

By: /s/Krista R. Hemming
Krista R. Hemming, Esq.
Attorneys for Plaintiffs,
JOSE GONZALEZ, and ROGER DIAZ

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